

When a court determines that a defendant is in default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977); Fed. R. Civ. P. 8(d); Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* 2688. Therefore, after receiving a default, a plaintiff

must still establish the extent of damages to which he is entitled. *Kelley v. Carr*, 567 F. Supp. 831, 841 (W.D. Mich.1983).

In this case, Plaintiff asked for a judicial foreclosure of the property at issue, \$280,000 which he states is the value he was told the property was worth, and attorney fees and expenses. The Magistrate Judge believes a lien and a judgment for the value of the property would be a windfall recovery. In fact, Plaintiff admits that he only suffered actual damages of \$25,000. [See D.E. 63-1, Declaration of Paul B. Champion].

Accordingly, the Magistrate Judge recommends a default judgment be entered by the Court against Defendants in the amount of \$25,000, as well as attorney's fees in the amount of \$14,170 and expenses in the amount of \$6,162.86. [See D.E. 63-1, Declaration of Paul B. Champion, D.E. 63-12].

Respectfully Submitted,

s/Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

Date: **May 14, 2013**

ANY OBJECTIONS OR EXCEPTIONS TO THIS REPORT AND RECOMMENDATIONS MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE REPORT AND RECOMMENDATIONS. 28 U.S.C. § 636(b)(1). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.